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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (s) No. 2785 of 2007

Petitioners

1) Budh Dev Sidar, S/o. Kunia Ram, aged 38 years, Working as Cook, R/o. Jashpur, Tahsil – Jashpur, Dist. Jashpur, CG/
2) Lal Sai Ram S/o. Late Chotan Ram, aged 48 years, working as Cook, R/o. Bankitali, Tahsil – Dist. Jashpur, CG.
3) Chhatramohan Yadav, S/o. Asharu Ram Yadav, Aged 32 years, working as Chowkidar, R/o. Baturakachar, Tahsil Pathalgaon, Dist. Jashpur, CG.
4) Raghunath Ram, S/o. Late Govindram, aged 40 years, working as Waterman R/o. Tatkela, Tahsil (Pirai) Bagicha, Dist. Jashpur, CG.
5) Dalpati Ram Bhagat, S/o. Late Bharnuram Bhagat, Aged 44 years, working as Cook, R/o. Tatidand, Tahsil – Bagicha, Distt. Jashpur, CG.

Versus

Respondents

1) State of Chhattisgarh, through the Secretary, Department of Tribal Welfare, D.K.S. Bhawan, Mantralaya, Raipur, CG.
2) Collector, Aadim Jati Kalyan Branch, Jashpur, Tahsil & Dist. Jashpur (The then Raigarh) CG.
3) Assistant Commissioner, Aadivasi – Vikas Tribal, Jashpur (The then Raigarh), CG.
4) Commissioner, Aadivasi Vikas, Raipur, CG.

(Writ Petition under Article 226 of the Constitution of India)

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Present:

Shri Harish Kuntiya, counsel for the petitioners
Ku. Sunita Jain, Panel Lawyer for the State.

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ORAL ORDER

(Passed on 7th May, 2007)

By this petition, the petitioners have challenged the validity of the order dated 4-10-1997 (Annexure P/4) passed by the Additional Collector, Raigarh, whereunder the grant of regular pay scales to the petitioners were withdrawn and the petitioners were paid thereafter daily wages as per Collector's rate.

2) The indisputable facts, in nutshell, are that initially the petitioner No.1 was engaged on daily wages on the post of Cook vide order dated 4-8-1993, the petitioner No.2 was engaged on daily wages on the post of Cook, vide order dated 4-6-1992, the petitioner No.3 was engaged on daily wages on the post of Chowkidar vide order dated 11-11-1993, the petitioner no.4 was engaged on daily wages on the post of Waterman vide order dated 27-9-1991 and the petitioner no.5 was engaged on daily wages on the post of Cook vide order dated 10-7-1989 and thereafter, the petitioner No.1 was granted regular pay scale vide order dated 4-8-96, the petitioner No.2 was granted regular pay scale vide order dated 6-11-95, the petitioner No.3 was granted regular pay scale vide order dated 19-11-96, the petitioner No.4 was granted regularly pay scale vide order dated 1-9-1994 and the petitioner No.5 was granted regular pay scale vide order dated 12-7-1992.

3. Learned counsel appearing for the petitioners would contend that once a right of a particular pay scale has been granted to the petitioners in accordance with law, the same cannot be withdrawn, without affording an opportunity of hearing. The petitioners have acquired the right to the fixed monthly pay scale as their services were regularized. Thus, the impugned order is bad and deserves to be quashed.

4. Learned counsel for the petitioners heavily relied on a judgment and order dated 18th January, 2006 passed by this Court in Writ Petition No.2125/2002 (Basant Kumar & others Vs. State of Chhattisgarh & others),

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where this Court while considering the identical issue of reducing the regular pay scale granted earlier, held that the order following any procedure known to laws is punitive and visits with civil consequences. The same cannot be passed without affording an opportunity of hearing to the concerned employee.

5. Learned counsel for the petitioners further submits that the respondents/State of CG preferred a Special Leave Petition (Civil) No. 17122/2006 (State of Chhattisgarh & others Vs. Sant Kumar & others) before the Hon'ble Supreme Court, challenging the order dated 18-1-2006 (supra), passed by this Court and the same has been dismissed by the Hon'ble Supreme Court vide order dated 9-10-2006 after condoning the delay.

6. Learned counsel appearing for the parties jointly submit that this case is squarely covered by the Judgment and order dated 18-1-2006 passed in the case of Sant Kumar & others (supra). Thus, the impugned order dated 4-10-1997 (Annexure P/4), is bad in law, being punitive in nature and passed without affording an opportunity of hearing to the concerned employees (petitioners) for putting forward their cases.

7. Accordingly, the order dated 4-10-1997 (Annexure P/4) is quashed. The petitioners are entitled to regular pay scales from the date the same have been withdrawn by the impugned order. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju